

## Under-Trial Prisoners and the Pandemic THE WAY FORWARD



### Draft Recommendations to Reduce the Number of Under-Trial Prisoners in Balochistan and Sindh

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## 1. Background

The Delivery Units and the Technical Working Groups of Sindh and Balochistan met on 27th April 2020 to consider the impact of the COVID-19 pandemic on the prison population.

The meeting explored the condition in the prisons, the current state of overcrowding and the increased risks to prisoners related to COVID-19. The meeting concluded by exploring the potential roles of the Criminal Justice System stakeholders to reduce over-crowding and thus the COVID-19 risks to prisoners and prison staff.

One of the main drivers of overcrowding in Pakistani prisons was identified as the large number of Under Trial Prisoners (UTPs). At the time of the meeting these accounted for about 4,800 of the total prison population of 14,000 in Sindh and 1091 out of 2025 spread across the total 11 prisons in Balochistan. Therefore, Balochistan stands out as the only province that is not facing an acute problem of overall overcrowding but there are specific prisons, where the problem of overcrowding exists, posing a grave risk of disease outbreak.

## 2. Prisoner Health

The state of prisoner health in Pakistan is not good. There are approximately 2,400 inmates reported to be suffering from contagious diseases such as HIV and TB, 2100 have physical ailments and 600 are suffering from mental illness.

Of the 193 Medical Officer positions in prisons 108 are vacant. Further, the medical facilities inside prisons are poor and prisons staff lack the capacity to deal with epidemics including a lack of awareness of the existing laws and mechanisms to deal with epidemics/pandemics.

In prisons there is fear and apprehension about the possible outbreak of contagious diseases. Therefore, an outbreak of COVID-19 in the prisons of Sindh and Balochistan is a real and present danger. At the moment, 97<sup>1</sup> inmates have been declared COVID positive in Balochistan and 1065<sup>2</sup> are positive out of the total tested population of 6552 in Sindh. The current situation may explode at alarming levels if not contained through timely measures.

## 3. Under-trial Prisoners and Overcrowding in Prisons

The reasons for large numbers of UTPs and consequent overcrowding in prisons have been identified as: delay in granting remissions by the competent authority; limited jail visits by the Judicial Officers; non-payment of fines or lack of surety bonds; lack of access to legal support and the non-production of the accused from prisons to courts.

When the reasons for large numbers of UTPs in the prisons are set against the fact that the final conviction rate for UTPs is around 30% then it is clear that the number of UTPs could be safely reduced.

There is an existing array of legal instruments, procedures and regulations that could be used to grant the safe release of UTPs and to reduce the flow of potential future UTPs into the prisons.

1 Balochistan Prisons Statistics of 22 June 2020

2 Sindh Prisons Department daily count of COVID cases

## 4. Reform Objective

The reform objective is to safely and rapidly reduce the number of under-trial prisoners and to sustain this drop over time

This Paper (including the detailed Annex A) sets out short, medium and long term reform actions to reduce the number of UTPs in the prisons of Balochistan and Sindh. These actions follow and build upon the existing Rule of Law Actions Plans for Sindh and Balochistan.

SECTION 5 below provides an analysis of the main Criminal Justice System stakeholder and the roles they would need to play to rapidly and safely to reduce the numbers of UTPs. The plan should be led on a day-to-day basis by the Delivery Units (and TWGs) in Balochistan and Sindh under the authority of the Co-Chair of the Steering Committee. It identifies two routes to reducing numbers rapidly and safely. Firstly, reducing UTPs already in prison and secondly reducing the flow of potential UTPs in future.

SECTION 6 below sets out specific targets for reducing the numbers of UTPs and the key actions to be taken by the key Criminal Justice system stakeholders.

Annex A provides further details of the legislative instruments and the medium and long term actions that will be needed to sustain the immediate reduction in the number of UTPs.

Annex B below sets out the Targets and Key Performance Indicators related to UTPs from the existing Rule of Law Action Plans for Sindh and Balochistan.

## 5. Roles of the Criminal Justice Stakeholders and Delivery Units

All stakeholders of the Criminal Justice System will be required to play active roles to reduce overcrowding in prisons and specifically to reduce the number of UTPs. The laws and the regulations governing the Criminal Justice System provide numerous powers which, if exercised, could reduce overcrowding in prisons and the risks of outbreaks of contagious diseases, including COVID-19. A detailed examination of the actions and legal authorities to sustainably reduce the numbers of UTPs is set out in Annex A.

The authority to undertake actions (within the framework of the existing legislation) to accelerate the safe release of UTPs will be provided by the Steering Committees and governments in Balochistan and Sindh. These Committees will consider this paper and grant authority to the respective Delivery Units and their Technical Working Groups to work with the appropriate Criminal Justice Institutions to drive a reduction in UTPs over the next few months.

However, at this time of the COVID-19 crisis, many members of the Steering Committees do not have time available to meet and thus reaching a quorum will be difficult. As an interim alternative to provide the necessary authority to this initiative the Co-Chair of the Steering Committees, the Home Secretaries, will inform the Heads of Department and support the Delivery Units and Technical Working Groups (TWGs) to take this initiative forward.

The Delivery Units (and TWGs) in Balochistan and Sindh will work with the key stakeholders in the Criminal Justice System to drive activities to rapidly and safely reduce the numbers of UTPs. They will do this by pursuing, supporting and monitoring reforms through two main routes:

- The first is to identify those UTPs currently in prison that could be released either by dropping charges against them or releasing them on parole or probation pending further actions such as settlement of fines, undertaking community service, etc;

- The second route to achieving a reduction in the numbers of UTPs in the prisons is to empower the police and courts to find alternative routes for potential UTPs that do not lead to incarceration.

Annex A sets out a comprehensive set of actions and reforms that will be necessary to sustainably reduce the UTP population. These reforms will need to be undertaken over the medium to long-term by the appropriate criminal justice institutions. Many of these actions can and should be undertaken in parallel with work on the more immediate plan for rapidly and safely reducing the numbers of UTP in prisons.

## 6. Plan for Reducing the Number of UTPs

The actions to be supported and monitored by the Delivery Units (and TWGs) for rapidly and safely reducing UTPs are set out below. These actions are not exhaustive and comprehensive but set out key reforms that will make the most difference in a short time frame. For further details and comprehensive actions necessary over time see Annex A.

To provide a framework against which we can monitor progress and the impact of the reform activities the following targets have been established. Progress towards these targets will be reviewed every two weeks by the Delivery Units (and TWG) and the involved Criminal Justice Institutions. The regular reviews will allow for adjusting the action plan (and the targets as necessary) in the light of progress made and the needs of the stakeholders.

The Sindh Rule of Law Action Plan 20-21 Strategic Target 1: Reduction in UTPs: 20% of minor offences and 10% of priority crimes, dacoity, robbery, homicide and SGBV.

**Table A: Target Numbers for Reduction in UTPs**

Number of UTPs as at End of April 2020	10% Reduction by 30th June:	Further 10% Reduction by 30th August:	Sustainable future UTP
	Target Number	Target Number	Targets from January 2021
Sindh: 4,800	4,300	3,900	????

Baluchistan: ????

Below in Sections 6.1 and 6.2 we set out the critical actions necessary to rapidly and safely reduce the number of UTPs. Firstly, targeting UTP already in prison and secondly to reduce the future number flowing into the prisons.

### 6.1 ACTION A – Identifying and Reducing the Current UTP Population

The Judiciary, Police and Prison Staff will collaborate towards identifying UTPs that may be safely released from prison: -

- Visits to prisons by the Judicial Officers should be increased in collaboration with the police to encourage the exercising of powers to release the accused, where there is little or no prospect of conviction or where there are viable alternatives to prison.
- Necessary trainings of the Judicial Officers are required to be held to enhance their capacity in terms of making quick and timely decisions for the release of prisoners/ UTPs, including for those who are suffering from;
  - Mental and contagious diseases or;
  - are infirm or old or;
  - are first time offenders of non-heinous offences.

## 6.2 ACTION B – Reducing the Number of New UTPs Flowing into the Prisons

In order to reduce the number of UTPs flowing into the prisons, following actions will be initiated:-

- A. The Inspector Generals of Police should issue the necessary directions to their field formations for the effective exercise of the powers conferred upon them by different laws (see Annex A) in terms of deferment of arrest and the release of the accused charged in a criminal case, where the case is not heinous;
- B. The Inspector Generals of Police should establish necessary safeguards to ensure that there is no misuse or abuse of the same;
- C. A committee of the Police and Prosecution should be established so that the Police may consult the Prosecution for its expert advice in case of need;
- D. Training and awareness sessions for police officials are required to be held to orientate them with respect to the exercise of the powers discussed (see Annex A);
- E. Joint capacity building initiatives should be launched to bring police and prosecution together to better understand each other's roles and responsibilities. This will also help in improving cooperation and coordination before, during and after investigation of a criminal offense;
- F. A 'Ticketing System' should be introduced and for non-serious offences, tickets should be issued rather than arresting the accused.

## 7. Next Steps

The Co-Chair of the Rule of Law Steering Committees in Balochistan and Sindh will review, amend, and approve this paper and circulate it for action to the Heads of Department. The Delivery Units (and TWGs) in Balochistan and Sindh will work with the leads in the Criminal Justice Institutions and establish action plans to take forward the recommendations above towards achieving a sustainable reduction in UTPs.

## ANNEX A

### A comprehensive list of plans and actions to reduce the under-trial prisoners by the criminal justice institutions

Overarching institutional mechanisms for coordination between Criminal Justice Institutions are already established in Sindh through the Provincial Justice Committee (PJC). The PJC is an apex provincial body responsible for ensuring the effective administration, operation and development of a fair, impartial and inclusive rule of law that addresses law, justice and security challenges within their territory/jurisdictions. However, this Committee has not met recently. In the longer term, when this Committee is fully functioning along with its District equivalent, the District Criminal Justice Coordination Committee will take a substantive role in maintaining a decrease on UTPs in Sindh.

#### 1. POLICE

The gateway to the Criminal Justice System is the Police. All those who are incarcerated enter through this route. Therefore, a key step to reducing the UTPs could be taken by the police, specifically:

- Police Officers deferring arrest until the investigation of the crime establishes prima facie involvement of accused/suspect in the commission of crime.

The laws that allow for this action include:

Rule 11.2.1 of Punjab Police Rules relating to General Power of Arrest conferred on a Police Officer by Cr.P.C, clearly states;

Section 54 Cr.P.C authorizes any police officer to arrest without a warrant any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.

The authority given under this section to the police to arrest without a warrant is, however, permissive and not obligatory. Whenever escape from justice or inconvenient delay is likely to result from the police failing to arrest, they are bound to do so; but in no other cases.

The law allows a police officer to apply to a magistrate for a warrant or a summon instead of making the arrest immediately, and this discretion shall be exercised whenever possible and expedient.

The law also allows a police officer in any bailable case to take security under section 170 Cr. P. C from an accused person to appear before a magistrate without first arresting him.

##### 1.1 Power to defer arrest

The police officer can defer the arrest until the investigation is sufficiently complete if the suspicion rests upon a particular person, and there is no risk of his absconding. If any interference with the liberty of the accused person is necessary to prevent him from absconding, and the facts justify arrest, the police shall arrest him and shall not interfere with his liberty unless they arrest him.

## 1.2 Power to refrain from investigation

Section 157 (2) of the Code of Criminal Procedure (Cr.P.C) empowers a Police Officer in Charge of a Police Station not to investigate a case if he/she sees no sufficient ground for Investigation.

Rule 25.1 of Punjab Police Rules 1934 also endorses this power of the Police Officer to refrain from Investigation in unimportant cases.

## 1.3 Power to release accused if evidence is deficient

Section 169 Cr.P.C empowers a police officer to release an accused if evidence is deficient or his involvement is not established.

## 1.4 Power to release person arrested in case of non-bailable offence

Section 497 Code of Criminal Procedure authorizes the officer in charge of a Police Station to release a person arrested in case of a non-bailable offence. It states that 'When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police Station, or appears or is brought before a Court, he may be released on bail but he shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years.'

## 1.5 Supreme Court Edicts

Former Chief Justice of Pakistan Justice (Retd.) Asif Saeed Khosa expressing concern over the high acquittal rates in criminal cases decided (74% in Sindh and 69% in Punjab) established District Assessment Committees headed by a retired district and sessions judge having significant experience in criminal cases. He also stressed upon National Police Bureau to devise a uniform strategy across the country regarding correct narration of FIR, unnecessary arrests and false evidence so that misuse of power for registration of criminal cases could be discouraged.<sup>3</sup>

## 1.6 Recommendations for Police:

The Role of the Police in Criminal Justice System is of pivotal importance as the legal actions against the individuals are initiated by the Police with the registration of the FIR. The Police have ample powers to defer the arrest until the investigation is sufficiently complete and that the available evidence is there to connect the accused with the commission of the offence. All actions are required to be kept secret from the suspect so as to avoid the risk of his absconding.

### 1.6.1 Short Term Actions

- A. The Inspector Generals of Police issue the necessary directions to their field formations for the effective exercise of the powers conferred upon them by different laws (see above) in terms of deferment of arrest and the release of accused charged in a criminal case, where the case is not heinous.
- B. The Inspector Generals of Police will establish necessary safeguards to ensure that there is no misuse or abuse of the same.
- C. A committee of the Police and Prosecution should be established so that the Police may consult the Prosecution for its expert advice in case of need.
- D. Training and awareness sessions for police officials are required to be held to orientate them with respect to the exercise of the powers discussed above.



- E. Joint capacity building initiatives should be taken to bring police and prosecution together to better understand each others' roles and responsibilities. This will also help in improving cooperation and coordination before, during and after investigation of a criminal offense.
- F. Ticketing system should be introduced and for non-serious offences. Tickets should be issued rather than arresting the accused.

### 1.6.2 Long Term Actions

- A. A committee is required to be constituted comprising of all stakeholders of the Criminal Justice System to work out the gaps resulting into the delay in the dispensation of Justice and to propose legislation in relevant fields enabling all stakeholders to exercise their powers transparently and minimize the chances of the arrest of the accused.
- B. Keeping in view the apprehension of accused abscondence, in exercising such like action, an indemnity clause should also be introduced in relevant laws.

## 2. PROSECUTION

Prosecution is a linchpin in the Criminal Justice System. The role of the Prosecution usually commences with the registration of the FIR. The Prosecution can reduce the number of cases sent up for trial through strict scrutiny and returning them if they do not meet the evidentiary standards that would result in conviction. Similarly, Prosecutors are authorized to withdraw a case from prosecution before or after the framing of charges. The Prosecution Acts empower the prosecution offices to supervise the entire process of investigation and also empower the prosecution officers to recommend those cases for discharge, where there is no prospect of conviction. Even at bail stage, if there does not exist a prima facie case against the accused, the Prosecutor can assist the court in terms of tendering opinion that there is a case of further inquiry and that the accused is entitled for bail. Similarly, in case of suspension of sentence, it can be suggested that there is no case for conviction and that the suspension is justified.

### 2.1 Power to withdraw from Prosecution

Section 494 Cr.P.C authorizes any Public Prosecutor, with the consent of the Court, before the judgment is pronounced, to withdraw from prosecution any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal:

- A. if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
- B. if it is made after a charge has been framed, or when under this Code, no charge is required, he shall be acquitted in respect of such offence or offences.

The Sindh Criminal Prosecution Service Act 2009 section 9 (A) 3 as amended in 2016 states that the prosecutor may withdraw with the consent of the court from prosecution of offences triable in standard criminal courts and of the offences triable by special courts at any stage of the trial before any trial court subordinate to the High Court before judgement.

The Prosecutor General or any Prosecutor specifically authorized by him, the reasons to be recorded in writing, inform the court on behalf of the Government that the prosecutor shall not prosecute the accused upon the charge and thereupon all proceedings against the accused shall be stayed and he shall be discharged of and from the same (Note: In Balochistan, the District Public Prosecutor in case of offences carrying seven years or less imprisonment and the Prosecutor General for all other offences, may withdraw prosecution, subject to prior approval of the Government).

## 2.2 Recommendations for Prosecution

### 2.2.1 Short Term Actions

- A. The immediate thing to be done is proper implementation of the Prosecution Acts and to establish Police Prosecution Coordination.
- B. The Home/Prosecution Secretaries along with Inspector Generals of Police are required to be sensitized in this regard. Notification of SOPs in this regard can be initiated and approved accordingly by Police and Prosecution Services.
- C. Police Prosecution Coordination Committees are required to be established in each district, for effective coordination and to work out the cases with slim chances of conviction so that those can be recommended for the purpose of discharge.
- D. Training is needed for prosecutors to enhance their capacity to undertake scrutiny and quality assurance of police reports.

### 2.2.2 Mid Term Actions

Enactment of draft legislation supplementing the Prosecution Acts that empower the Prosecution Officers to effectively exercise their powers in terms of:

- A. Supervision of investigation, recommending cases for discharge;
- B. Assisting the court by conceding in those matters, where there is no prima facie case against the accused because of weak evidence.

Improved joint training of Police and Prosecutors on Police and Prosecutors Cooperation.

### 2.2.3 Long Term Actions

There is need for a uniform Prosecution Act for all Prosecution Services in the country that will:

- A. Include clauses for enhanced coordination between Police and Prosecution;
- B. Provide for the availability of a Prosecutor at the Crime Scene;
- C. Recommend cases for discharge or dropping at the investigation phase where there is insufficient evidence.

## 3. JUDICIARY

Judicial Officers are responsible for assessing the available evidence produced by the prosecution and adjudicating upon the same. Mechanisms have been introduced for curtailing the court burden by maximizing the disposal of the cases which ultimately results in slimming down the prisons population.

The just and frequent resort to invoking sections 249A and 265K prevents long, unnecessary and frivolous cases pending trial. This is explained below in more detail.

### 3.1 Power of Magistrate to acquit accused at any stage during trial

Section 249-A Cr.P.C empowers a Magistrate to acquit the accused at any stage. It states 'Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case, if after hearing the prosecutor and the accused, and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence'.

### 3.2 Power of Court to acquit the accused at any stage during trial

Section 265-K Cr.P.C empowers a court to acquit the accused at any stage during trial. It states 'Nothing in this Chapter shall be deemed to prevent the Court from acquitting an accused at any stage of the case, and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence'.

### 3.3 Courts may also consider placing offenders on Probation instead of awarding jail sentences.

Alternatively, suspended sentences can be awarded in which the offender can be penalized to perform compulsory community service under supervision and demonstrate good conduct. The process of Social Investigation Reports should be followed in letter and spirit.

As a rule, first offenders should not be sent to jails but placed on probation or awarded suspended sentences of imposed community service.

Juvenile offenders should be sent to reformatory schools rather than prison. The minimum age of criminal liability in Pakistan is seven years and all juveniles are under the age of eighteen years. This puts them in the category of the child, and they are protected by The Rights of the Child, a UN Convention to which Pakistan is a signatory. They are not to be imprisoned along with adults and their cases are to be tried in juvenile courts. They cannot be awarded death sentence. Courts may consider Probation or the Reformatory School as a substitute to detaining them in Borstal, Jail or Central Prisons.

### 3.4 Recommendations

#### 3.4.1 Short Term Actions

Visits by Judicial Officers should be increased in collaboration with the police to encourage the exercising of powers to release the accused where there is little or no prospect of conviction or where there are viable alternatives to prison.

Necessary trainings of the Judicial Officers are required to be held to enhance their capacity in terms of making quick and timely decisions for the release of those prisoners/UTPs who:

- A. are suffering from mental and/or contagious diseases or;
- B. are infirm, old or;
- C. are first time offenders of non-heinous offences.

#### 3.4.2 Medium Term Actions

- A. Budgetary grants for payment of fines for convicts who are unable to pay them may be a difficult proposition for Government as it involves public funds. The following option is suggested instead. A significant number of convicts who have completed their period of imprisonment are languishing in prisons because of their inability to pay these fines. In such situations, Parole can be considered a viable option to release the convict so that he can engage in gainful employment and settle his liabilities on one hand while reintegrating in society on the other. Parole rules provide for gainful employment for parolees. They can be given the relaxation of payment of fines in instalments. Home Department of Sindh can play a pivotal role in this regard in coordination with Judiciary and Prisons Department.
- B. It should be ensured that a prosecution witness once produced is examined unless due to some avoidable reasons.
- C. Cause lists of the courts should be drawn up in a manner which should only cover the cases that will come up for hearing and will not be adjourned. This will require the Prosecutor, Police and Court representatives engaged in case management to work

in close coordination. The Bar Councils can also be engaged in this regard. Instances have come to notice where over 200 cases were fixed for hearing on a particular day by a trial court. Even a person of common prudence would understand that it was impossible for PWs of so many cases to be examined in a day.

- D. The Registrars of the High Courts are required to be taken into loop, by sensitizing them for issuing necessary directions to their field formations for effective and timely exercise of the powers vested in them u/s 249-A & 265-K of the Cr.P.C
- E. Similarly, they may also be encouraged for taking lenient views for those prisoners who are suffering from different contagious diseases or serious ailments.
- F. Trials should also be conducted through video-link which will not only save time but costs and energy as well.
- G. Processes for service should be issued to the Police for service upon the Prosecution Witnesses (PWs) in those cases which would proceed on the notified date. The PWs attending should not be returned unexamined by the Court.
- H. Court Police should ensure that custody of under-trial prisoners is produced in court on the dates of hearing positively.
- I. The Investigation officers and the local police station should ensure that case properties of all the cases on the cause list are produced on the notified date of hearing.

### 3.4.3 Long Term Actions

- 1. The law provides discretion to the Judicial Officers in bail matters, the categories of the UTPs discussed above can be denied bail if a Judicial Officer do not deem it appropriate to allow bail.
- 2. Necessary legislation is required to be done for the immediate release of those suffering from infectious diseases, keeping in view that there is no chance of absconding and that in suitable cases such UTPs can be kept under strict medical care, etc.
- 3. Recommendations from serial No: 4 to 6 are endorsed with the addition that in the context of COVID-19 pandemic and handling future Epidemics comprehensive contingency plans should be drawn up by all stakeholders, viz Police, Prosecution, Prisons, Probation and Reclamation and the Judiciary.

## 4. PRISONS

The challenges facing prisons and prisoners in Pakistan are deep rooted and complex. The following approach is proposed to address the issues of overcrowding in prisons.

### 4.1 Prisoner Act 1900

- A. Section 7 of the Prisoners Act 1900 provides complete mechanism to deal with epidemic disease
- B. The law provides for temporary accommodation for prisoner where there is an outbreak of epidemic disease. Provision shall be made for shelter and safe custody in temporary prisons (if the population is greater and cannot be conveniently or safely kept there in)

## 4.2 Recommendations

### 4.2.1 Short Term Actions

- A. Remission system should be utilized in accordance with law;
- B. Release of UTPs on probation and parole.

### 4.2.2 Medium Term Actions

- A. Payment of unpaid fines from Government exchequer should be explored along with mechanisms to recoup this over time.
- B. A Sustainable capacity building and advocacy initiatives are required to support the more efficient use of the remission and probation system for prison staff
- C. An assessment of fundamental financial needs of a prison should be carried out for improving the infrastructural and human resource of prisons, considering the growing population of Pakistan. The assessment and recommendations are to be shared with the concerned ministry and the department followed by advocacy efforts to seek the required support;
- D. The content and quality of prisons staff's training and trainers could be assessed for a better functioning of prisons. The prison department can be assisted technically and financially to implement the recommendations based on the assessment.

### 4.2.3 Long Term Actions

- A. An empowered and independent Provincial Commission maybe formed consisting of key stakeholders from the treasury and opposition benches, legal experts and civil society to implement the laws pertaining to prisons and prisoners in true letter and spirit. The commission may also monitor the performance of prisons, guide the government for improvements such as preparation of SOPs and amendments in laws, as well as facilitate coordination between the concerned departments.
- B. With respect to the above-mentioned action, the Sindh Prisons and Correctional Services Act of 2019 provides for the creation of a Prison Policy Board and Prisons Management Board which can service these purposes.
- C. Legal and judicial experts, concerned legislators and other key stakeholders can be consulted to draft the set of most required legislative amendments in the relevant laws for a lasting improvement in the condition of prisons.

## 5. ACCESS TO JUSTICE AND THE LEGAL AID SYSTEM

The legal frameworks that establish the provision of legal aid are:

1. Article 10A and 37 (d) of the Constitution of the Islamic Republic of Pakistan, 1973;
2. Section 340 of the Code of Criminal Procedure 1898;
3. Order XXXIII and Order 44 of the Code of Civil Procedure, 1908;
4. The Legal Practitioners and Bar Council Act, 1973;
5. Section 13 (1a) of the Pakistan Bar Council including Rule 2 (2) Free Legal Aid Rules, 1999 (Amended 2011);
6. Destitute Legal Fund Rules, 1974; The Sindh High Court Rules (Vol, V, Ch, 4-R-E);
7. District Legal Empowerment Committees (DLECs), 2011;
8. Committee for the Welfare of the Prisoners 2004 (Sindh); and 9) Prosecution Department Sindh.

There is a lack of clear standard operating procedures (SOPs) with respect to the provision of legal aid, and a lack of proper monitoring, reporting and evaluation mechanisms. This make

it impossible to assess the scale and quality of the legal aid services provided to poor people. There is also a lack of coordination between the various legal aid providers and the government counterparts, including prison departments, to ensure the quality of the legal aid service and the management of data. Further, there is a general lack of awareness about the legal rights of the accused, legal aid/assistance and available remedies. This is particularly acute amongst the poorer and marginalized communities and even in some cases within the departments and bar associations.

An efficient legal aid system can significantly help to reduce the population of UTPs over the medium and longer term.

## 5.1 The Existing Framework:

District Legal Empowerment Committees were constituted by the Law and Justice Commission of Pakistan (LJCP) in 2011, to provide free legal aid to deserving litigants at the district level. The committee is to meet once a month to consider applications for free legal aid. However, these committees are either completely dormant or operating erratically and within a very limited ambit. Besides, most of the eligible beneficiaries are unaware of the various portals for legal assistance, especially DLEC. Thus, the forum is not considered an effective way to provide free legal aid. Between 2012 and 2016, 91% of the funds allocated to these committees remained unspent.

District Legal Aid Committees: The Pakistan Bar Council, under the Free Legal Aid Rules 1999, has the mandate to provide free legal aid and create awareness about legal rights. Under these rules, the Pakistan Bar Council manages central, provincial and district free legal aid committees. However, the committees are inactive.

## 5.2 Recommendations

### 5.2.1 Medium Term Actions

1. The commencement of a Public Awareness campaign on the roles and responsibilities of District Legal Empowerment Committees.
2. Promotion of the establishment of a broader committee consisting of the representatives of Police, Prosecution, Judiciary, Bar and Prison Department that can meet on fortnightly basis to discuss issues pertaining to overcrowding and early disposal of cases. In Sindh this can be achieved through the already available Sections 109 to 111 of the Sindh Police Act 2019.
3. Activating District Legal Empowerment Committees & District Legal Aid Committees (ownership, effective oversight, performance management mechanism by engaging LJCP, Pakistan Bar Council, High Courts, Ministry of Law, Justice and Human Rights)
4. In order to minimize the chances of adjournment during the trial of the cases the lawyer community is also required into loop. It must be ensured during the meetings of Police Prosecution that all witnesses are produced in time and that there is no delay, whatsoever, in the disposal of the cases.

### 5.2.5 Long Term Actions

1. Establishing a national/provincial framework for the provision of legal aid i.e. Legal Aid Authority
2. Amendments in the Bar Council Acts are required to be made to introduce the necessary clauses whereby the lawyer community is bound to avoid unnecessary adjournment and that a Panel Clause may be introduced to the Bar Council Act to punish those responsible for delaying the Judicial Process.

## ANNEX B

UNDER TRIAL PRISONERS:- SPECIFIC TARGETS IN THE SINDH (2020-21) AND BALOCHISTAN (2019- 20) WORK PLANS

### Sindh RoL Action Plan / Overall Action Plan 20-21

Strategic Target 1: Reduction in UTPs: 20% of minor offences / 10% of priority crimes, dacoitey, robbery, homicide and SGBV

KPI 1:- Reduction in average trial time

KPI 2:- Provision of legal aid to deserving UTPs

KPI 3:- Enhanced Use of Probation Services

Balochistan RoL Action Plan 2019-20

Strategic Target 2: UTPs decreased (No target given)

KPI 2:- UTPs provided with free legal assistance

KIP3:- Inmates provided with parole and probation

### Balochistan Departmental Targets – Prisons

DT 2 – Prison modernisation

KPI 2:- Proportion of UTPs reduced through better prison management techniques

### Balochistan Departmental Targets – Parole and Probation






DT 1 – Citizens more aware of Parole and Probation Services

KIP 1:- Increase in cases availing use of parole and probation

The comprehensive approach of UNODC is aligned with Pakistan's vision 2025. Striving to achieve the Sustainable Development Goal (SDG) 16 on Peace, Justice and Institutions: *"Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."* Also contributing to the SDG Goals 3, 5, 8, 11, 15 and 17.



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